

FCC MAIL ROOM

Before the  
Federal Communications Commission  
Washington, D.C. 20554

Nov 20 12 42 PM '04

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	
Table of Allotments,	)	MM Docket No. 02-212
FM Broadcast Stations.	)	RM-10516
(Vinton, Louisiana, Crystal Beach, Lumberton	)	RM-10618
and Winnie, Texas)	)	

### MEMORANDUM OPINION AND ORDER

**Adopted: November 24, 2004**

**Released: November 26, 2004**

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a Petition for Reconsideration filed by Charles Crawford directed to the *Report and Order* in this proceeding.<sup>1</sup> Tichenor License Corporation ("Tichenor License") filed an Opposition to Petition for Reconsideration and Charles Crawford filed a Reply. In addition, Tichenor License filed a "Motion for Leave to File Study of 'Tuck' Decisions" and a "Study of Reported Decisions by FCC Approving the 'Tuck' Precedent to Determine Whether to Grant or Deny a 'First Local Service Status' in F Allotment Rulemaking Proceedings" ("Study"). Tichenor License filed an Opposition to Motion. For the reasons discussed below, we deny the Petition for Reconsideration.

#### Background

2. At the request of Charles Crawford, the *Notice of Proposed Rule Making* in this proceeding proposed the allotment of Channel 287A to Vinton, Louisiana, as a first local service.<sup>2</sup> In response to the *Notice*, Tichenor License, licensee of Station KOBt, Channel 264C, Winnie, Texas, and Station KLTO, Channel 287C2, Crystal Beach, Texas, filed a Counterproposal. In the Counterproposal, Tichenor License proposed the reallocation of Channel 264C from Winnie to Lumberton, Texas, and modification of its Station KOBt license to specify Lumberton as the community of license. In order to replace the loss of the sole local service at Winnie, Tichenor License also proposed the reallocation of Channel 287C2 from Crystal Beach to Winnie, and modification of its Station KLTO license to specify Winnie as the community of license. The *Report and Order* granted the Tichenor License Counterproposal. The *Report and Order* was pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.<sup>3</sup> *Community of License* requires that any reallocation proposal result in a preferential arrangement of allotments using the FM

<sup>1</sup> *Vinton, Louisiana, Crystal Beach, Lumberton and Winnie, Texas*, 19 FCC Rcd 7960 (MB 2004).

<sup>2</sup> *Vinton, Louisiana*, 17 FCC Rcd 15191 (MB 2002).

<sup>3</sup> See *Modification of FM and TV Authorizations to Specify a New Community of License* ("Community of License"), 4 FCC Rcd 4870 (1989), *recon. granted in part* 5 FCC Rcd 7094 (1990).

5. We also reject any argument that Tichenor License filed its Counterproposal in order to preclude the Charles Crawford proposal for a Channel 287A allotment at Vinton. A first local service at Lumberton provides a significant public interest benefit. There is nothing in the record of this proceeding or any other proceeding, beyond the speculation of Charles Crawford, that would suggest that Tichenor License filed its Counterproposal to preclude the Vinton proposal or will not file the appropriate application to implement a first local service at Lumberton. In addition to the public interest finding discussed above, we also determine in an allotment rulemaking proceeding that the proposed allotment complies with all technical and legal requirements. It would not be conducive to the efficient transaction of Commission business to expand the scope of an FM allotment rulemaking proceeding to include other issues as suggested by Charles Crawford.<sup>7</sup> To the extent Charles Crawford's reference to a Tichenor License "powerhouse" in the Houston and Beaumont Urbanized Areas suggests a violation of the multiple ownership rules, it is established policy that we do not consider multiple ownership issues in conjunction with an allotment rulemaking proceeding.<sup>8</sup>

6. This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this *Memorandum Opinion and Order* to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the petition for reconsideration was denied.

7. Accordingly, IT IS ORDERED, That the aforementioned Petition for Reconsideration filed by the Charles Crawford IS DENIED.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief  
Audio Division  
Media Bureau

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has not suggested that our determination in this case is inconsistent with any of those 53 decisions or that any of those decisions would support a denial of the proposal in this proceeding.

<sup>7</sup> *Tylertown, Mississippi*, 14 FCC Rcd 4057 (MMB 1999).

<sup>8</sup> *See Detroit Lakes and Barnesville, Minnesota, and Enderlin, North Dakota*, (MMB 2002); *see also Letter from Peter H. Doyle, Acting Chief, Audio Services Division, to Paul A. Cuelski, Esq. et al.*, File No. BAPH-2001112AIA (May 24, 2001).

allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.<sup>4</sup> In this situation, the reallocation resulted in Lumberton (with a population of 8,731 persons) having its first local service while Winnie (with a population of 2,914 persons) will now receive local service from Station KLTO. The reallocation of Channel 264C to Lumberton does not involve any change in the technical facilities of Station KOBT. On the other hand, the reallocation of Channel 287C2 to Winnie will result in a net gain in service to 269,619 persons. The *Report and Order* also noted that because Winnie and Lumberton are already located within the Beaumont Urbanized Area, Tichenor License would not be required to submit a showing pursuant to *Faye and Richard Tuck* to demonstrate that Lumberton is independent of the Beaumont Urbanized Area and entitled to consideration as a first local service.<sup>5</sup> Nevertheless, Tichenor License provided a showing pursuant to *Faye and Richard Tuck* demonstrating that Lumberton is independent of the Beaumont Urbanized Area. In granting the Tichenor License Counterproposal, we denied the conflicting Charles Crawford proposal requesting a Channel 287A allotment at Vinton, Louisiana, as a first local service. That action was premised on the public interest benefit of a first local service to the larger community of Lumberton (with a population of 8,731 persons) compared to a first local service to the smaller community of Vinton (with a population of 3,338 persons).

3. In his Petition for Reconsideration, Charles Crawford argues that his Vinton proposal for a first local service in a rural area should be preferred over a "contrived proposal" for a first local service in a "tiny community in a corner" of an Urbanized Area. In this regard, Charles Crawford also contends that finding Lumberton to be a first local service under *Faye and Richard Tuck* was "impermissibly subjective." In addition, Charles Crawford claims that the proposed reallocation to Lumberton was an "unsavory" and "illegitimate" effort to block his proposal for Vinton which, in turn, allowed Tichenor License to relocate Station KLTO from Crystal Beach to Winnie and create a combination with commonly owned stations which would become a "powerhouse" in the Houston and Beaumont Urbanized Areas.

4. We deny the Petition for Reconsideration. At the outset, we affirm our determination that Lumberton is entitled to consideration as a first local service under the guidelines set forth in *Faye and Richard Tuck*. The Lumberton 2000 U.S. Census population of 8,731 persons is substantial and is 8 percent of the 113,866 person population of Beaumont. Lumberton is governed by an elected mayor and city council. With an annual budget of \$2,131,671 and 30 positions, the Lumberton city government includes a city attorney, municipal court, a planning and zoning commission, a public library and police and fire departments. Lumberton is located in Hardin County, and receives no governmental services from Beaumont, located in Jefferson County. The Lumberton Independent School District, headquartered in Lumberton, provides schools. Lumberton also has its own local businesses, health care facilities, churches and civic organizations. These specific facts support our determination that Lumberton is independent of Beaumont and entitled to consideration as a first local service. We conclude that Crawford's "impermissibly subjective" allegation is without merit.<sup>6</sup>

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<sup>4</sup> 90 FCC 2d 88 (1988). The FM allotment priorities are: (1) First fulltime aural service;; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

<sup>5</sup> *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988); see also *East Los Angeles, Long Beach and Frazier, California*, 10 FCC Rcd 2864 (MMB 1995).

<sup>6</sup> In his Study, Charles Crawford merely lists 53 decisions along with maps in which we made a determination that a proposal was entitled to consideration as a first local service under *Faye and Richard Tuck*. Charles Crawford (continued....)